IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10244 of 1999
with
SPECIAL CIVIL APPLICATION NO. 10245 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIMPLEX CONCRETE PILES (INDIA)LTD & ANR.

Versus

UNION OF INDIA

Appearance:
MR NAVIN K PAHWA for Petitioners
MR AKSHAY H MEHTA for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2
MR PR NANAVATI for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 28/03/2000

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

Both these petitions are directed against the show cause notices issued by the respondent No.2 - the Commissioner of Customs and Central Excise, calling upon the petitioners to show cause as to why the duties, penalties and interest mentioned therein should not be imposed and as to why the property mentioned therein should not be confiscated under the provisions of the Central Excise Act, 1944 and the Rules framed thereunder.

2. The main grievance raised by the petitioners through their learned Senior Counsel is that the question of existence of jurisdictional facts which could have justified issuance of any such show cause notice, was not taken into account by the concerned authority. According to the petitioners, there was an exemption Notification No. 5/98 dated 2.6.1998, issued under Section 5A of the said Act, under which "nil" duty was to be levied in respect of goods manufactured at the site of construction for use in construction work at site. It is also the petitioners' case that in view of the Circular No. 456/22/99-CX. dated 18th May, 1999, the scope of the word "site" appearing in the Notification No. 5/98-CE was explained and the Board had decided that the said expression "site" may not be given a restrictive meaning and shall include any premises made available to the manufacturer of goods falling under the heading No. 68.07 of the Schedule to the Central Excise Tariff Act, 1985, by way of a special mention in the contract/agreement for such construction work, provided that the goods manufactured at such premises are solely used in the said construction work only. According to the petitioners, the manufacture of Tetrapods was at the site as understood in the meaning attributed to that expression in the circular issued by the Board. The petitioners have also stated that the Maritime Board and the petitioners had, before the issuance of the show cause notice, sent communications to the respondent No.2 after the seizure was effected, which clearly indicated that the notification and the circular were applicable and no duty could be charged in respect on these goods. It was also urged that Rule 174 of the Central Excise Rules, which is referred to in the show cause notice would have no application in view of the Notification No. 22/98 dated 4.6.1998 issued under sub-rule (2) of Rule 174 of the Rules. In other words, no Central Excise registration was required so far as the petitioners were concerned because the manufacture was in respect of the item which was wholly exempt from duty without any

condition.

3. The show cause notices which have been issued do not give an indication as to whether the above relevant factors which ought to have been considered before issuance of the show cause notices were in fact taken into account. There has to be some basis warranting issuance of such show cause notice. The question of issuance of show cause notice is undoubtedly within the domain of the concerned authority, which has to exercise its discretion in accordance with the provisions of law.

4. While the matter was being argued in context of the factors which ought to have been considered before issuance of the show cause notices, the learned Counsel for the respondent No.2 stated that the respondent No.2 will take into account the above relevant factors and take a decision whether the show cause notices already issued in these matters should be pursued or not. He also submitted that in this process the petitioners should render assistance as may be sought by the authorities in this regard. The learned Counsel for the petitioners states that the petitioners will render all the assistance that may be required for such reconsideration by the respondent No.2. In this view of the matter, we direct that the respondent No.2 shall take into account all the factors which have been mentioned above and which were required to be considered for issuance of a show cause notice, and take a decision whether the show cause notices already issued to the petitioners should be pursued or not. Both the petitions are disposed of accordingly. Rule is discharged in each of them with no order as to costs.

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